

It can, in fact, scarcely be insisted, that the complainant is entitled to a decree, directing these defendants, as executors of Durkee, to bring into court the whole amount of the proceeds of the sales made by him. Before any order could be passed, an account would have to be taken, not only of the assets in the hands of the executors, but to ascertain how much is due from the former trustee. But how can such an account be taken in this cause, and between these parties. The case for the sale of the estate in question, is still depending on the equity side of Baltimore County Court. It has never been transferred to this court, and although I think it very clear, that this court may, upon this bill, which has been brought here upon the suggestion of the defendants, administer the same relief which could have been administered by the Baltimore County Court, yet I hold it equally clear, that the account of the trust of Durkee, should be taken in the cause, in which he was appointed trustee. In that cause his report of the sales was made, and there, and there alone, the elements for stating the account are to be found. Besides, the proper parties are not here, for taking such an account. The only parties in this case, are the complainant, the surety of Durkee, and his executors: the parties entitled to the money, if it has not been paid, not being either plaintiffs or defendants. How then, would it be possible to have an account taken, when the accounting parties are not present?

If, therefore, the court was to interfere at all, it must order the whole proceeds of sale to be brought in by these executors, when there is certainly ground for believing that the money, or at least a portion of it, has been paid. This would be a very harsh proceeding, and one which is not necessary for the indemnity of the complainant, as surety of Durkee, because, as has been shown, there is another mode by which he may provide for his safety: that is, by compelling the parties entitled to the money, (if they have not been paid,) to sue the principal debtor, and in case they refuse to do so, his responsibility as a surety, would be discharged. Having this remedy fairly in his reach, there can be no propriety in adopting a course